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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/664,885

09/19/2000

Richard Rubin

4138-A1

5127

29370

7590

05/25/2006

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EXAMINER

PASCUA, JES F

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 05/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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09/664 885

EXAMINER

ART UNIT	PAPER
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20060523

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

The reply brief filed 04/20/2006 has been entered. The application has been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal.

Jes F. Pascua
Primary Examiner
Art Unit: 3727

Enter
Reply Brief.
P
03/23/06

The only ground of rejection is whether claims 1-20 are unpatentable over Walsh (U.S.P. 3,428,103)? Here it must be noted that Walsh was cited initially but not specifically applied.

In his answer, the Examiner responds to appellant's citation of cases showing that reopening of this case on the same art is improper and also that *res judicata* applies, by attempting to shift the burden of showing prior adjudication to appellant. In this response appellant reaffirms all of his previous arguments and includes them in this answer by reference. Specifically it should be noted that the Patent Office's own rules require the consideration of all the cited art, i.e. 37 C.F.R. § 1.104, which states that the Examiner shall make a thorough investigation of the available prior art. Also, since Walsh was cited initially it must have been considered. How would the Examiner cite a patent without considering what was disclosed in that patent? Thus, the burden is not on the appellant but is on the Examiner to show that the art he now considers important is better than the initially applied art.

Appellant believes that Walsh was not applied in the first instance because it is not particularly applicable, i.e.